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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,754	01/16/2004	Lee Mantis	135/2	6441
<div>7590 Schwartz Law Firm, P.C. SouthPark Towers Suite 530 6100 Fairview Road Charlotte, NC 28210</div>				
			<div>EXAMINER CASTELLANO, STEPHEN J</div>	
			<div>ART UNIT 3781</div>	<div>PAPER NUMBER</div>
			<div>MAIL DATE 07/27/2007</div>	<div>DELIVERY MODE PAPER</div>

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/758,754

Applicant(s)

MANTIS, LEE

Examiner

/Stephen J. Castellano/

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faller in view of Anderson.

Faller discloses a food compartment tray, a lid with an integrally formed hinge and a flexible sheet (film 16). Faller discloses the invention except for the sheet being unattached along three tray side edges. Anderson teaches a sheet that closes the top of a compartment as shown in Fig. 3. When the compartment of Anderson is opened and unsealed, the flexible sheet becomes unattached to the tray along three side edges and is attached only at one side edge as shown in Fig. 7. It would have been obvious to modify the sheet which is sealed to be attached by a removable attachment by means of releasable adhesive or any other releasable means so that the flexible sheet cover can be peeled back and attached to only one side edge of the tray so that the flexible sheet doesn't become displaced or discarded inadvertently.

Claims 2-5, 9-12 and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faller in view of Anderson as applied to claims 1 and 8 above, and further in view of Rider (6102231) and Easley.

The Faller-Anderson combination discloses the invention except for the materials of polystyrene and wax paper, the compartments in the food tray and the tab/slot arrangement.

Rider teaches a foamed polystyrene tray with compartments and a lid which closes by a tab/slot arrangement. It would have been obvious to modify the material to be foam polystyrene to provide insulation. It would have been obvious to modify the tray to have multiple compartments to provide segregation of different food items. It would have been obvious to modify the lid closure to be a tab/slot arrangement to insure that the lid doesn't inadvertently open and spill the contents.

Easley teaches a wax paper as a thin film covering for foods in col. 1, lines 14-16. It would have been obvious to modify the material of the covering of flexible sheet to be wax paper for its particular compatibility with food, relative reduced cost and ready availability.

Re claim 5, 12 and 18, Official notice was taken in the non-final Office action mailed December 26, 2006, that removable attaching with releasable adhesives is well known in the art of containers. The Official notice has not been challenged and is now being treated as a prior art admission. It would have been obvious to modify the adhesive attachment of Faller's flexible sheet cover to be attached along a length of the integrally formed hinge with a releasable or peelable adhesive to allow easy access to the food by a consumer.

Claims 5-7, 12-14 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faller in view of Anderson, Rider and Easley as applied to claims 4, 10 and 17 above, and further in view of Bernhardt and Williams.

The combination discloses the invention except for perforated tear line arrangement. Bernhardt teaches a score line 19 that extends from one side edge to an opposite side edge. It would have been obvious to add the tear line to allow easy access to the food contents by the consumer by allowing the sheet to be separated from the tray by tearing and discarding as an

option. It would have been obvious to add the teachings of a starter nick as taught by Williams to reduce the force needed to begin the tearing process.

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen J. Castellano/  
Primary Examiner  
Art Unit 3781

sjc